

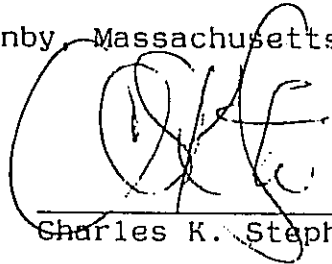
AFFIDAVIT

My name is Charles K. Stephenson. Under oath, I depose and say that:

1. I am an attorney licensed to practice in the Commonwealth of Massachusetts. My Board of Bar Overseers registration number is 479150. I am appellate counsel to the defendant, Hector Arriaga.
2. In telephone conversations I conducted with Frank Davis, the Jury Commissioner for the Commonwealth, during the summer and fall of 1995, Mr. Davis repeatedly expressed his opinion that jury data maintained by his office was privileged, and stated that such information would not be released except in response to a court order.
3. On April 29, 1996, in the wake of the Supreme Judicial Court's decision in *Commonwealth v. Tolentino*, 422 Mass. 515 (1996), in writing I renewed my request for jury attendance data, citing the provisions of G.L. c. 66, § 10, The Massachusetts Freedom of Information Act. On May 22, 1996, I received a reply from the Jury Commissioner, denying my request based on a letter of advice from the Office of the Counsel for the Trial Court. Copies of that correspondence are attached.
4. If permitted access to the jury lists for September 7 through 10, 1993, I would attempt to interview all jurors whose first or surnames were potentially Hispanic, in an effort to substitute confirmed empirical data for that I have submitted based on the Census Bureau's Hispanic surname list and statistical analysis. Beyond attempting to establish those jurors' ethnic origin, I would make no further inquiry. If permitted

access to the July through September lists, I would analyze that data by comparing surnames to the Census Bureau list to generate statistical evidence spanning a broader period of time, permitting the parties to determine whether the racial composition of the September 7-10 jury pool was consistent with or a departure from the norm. I would not undertake to have any personal contact with those jurors, except as directed by the court.

Signed under penalties of perjury, this twenty-third day of September, 1996, at Granby, Massachusetts.



Charles K. Stephenson